

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 13992 OF 2018

Baliram Balu Wagh	]	Petitioner
Vs.		
Gramsevak Village Grampanchayat	]	
Shenit and others.	]	Respondents

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Mr. Dushyant S. Pagare, for the Petitioner.
Mr. S.P. Dighe, for Respondents No.2 and 3.
Mr. S.H. Kankal, A.G.P, for Respondents No.4 and 5.

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CORAM : R.G. KETKAR, J.

DATE : 13TH DECEMBER, 2018.

P.C:

Heard Mr. Pagare, learned Counsel for the petitioner, Mr. Dighe, learned Counsel for respondents No.2 and 3 and Mr. Kankal, learned A.G.P, for respondents No.4 and 5 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 29th September, 2018 passed by respondent No.4, the Additional Collector, Nashik Division, Nashik in Gram Panchayat Dispute No.63 of 2018 as also the judgment and order dated 4th February, 2018 passed by respondent No.5, the Additional Commissioner, Nashik Division, Nashik in Gram Panchayat Appeal No.88 of 2018. By these orders, the Authorities below have disqualified the petitioner under section 14 (1) (j-1) of the Maharashtra Village Panchayats Act, (for short 'Act'). The relevant and material facts that are necessary for deciding the present Petition, briefly stated, are as under;

3. The elections of Gram Panchayat of Village Shenit, Taluka Igatpuri, District Nashik (for short 'Gram Panchayat') were held on 22nd June, 2014. Election was for the period of 2014 to 2019. Results were declared on 23rd June, 2014. The petitioner was elected. In the meeting of Gram the Panchayat held on 8th June, 2014, the petitioner was elected as 'Sarpanch' of the Gram Panchayat. Respondent No.3 herein was elected as "Upsarpanch" in the said meeting. Respondents No.2 and 3 herein have instituted Gram Panchayat Dispute No.63 of 2018 under section 14 (1) (j-1) and section 16 of the Act, *inter alia*, contending that the petitioner is having more than two children after cut off date i.e after 12th September, 2001 and thus, the petitioner has incurred disqualification and is not entitled to continue as member of Gram Panchayat. Respondents No.2 and 3 contended that the petitioner had given birth to the third child Soni. They also contended that the petitioner had second child by name Apeksha.

4. The petitioner contested the proceedings by filing reply and denied all the allegations. He contended that child Apeksha is not his daughter and he has only two daughters namely Renuka, born on 20th March, 2014 and Soni born on 13th February, 2018. On the date of filing of the nomination, he had only one living daughter Renuka. The parties filed documents in support of their respective case. By order dated 29th September, 2018, respondent No.4 held that the petitioner is having more than two children after the cut off date and declared that the petitioner is disqualified from continuing as member of the Gram Panchayat, consequently disqualified to hold the post of Sarpanch.

5. Aggrieved by this decision, the petitioner instituted Gram Panchayat Appeal No.88 of 2018. After considering the material on record, respondent No.5 by order dated 4th December, 2018 dismissed the appeal and upheld the order dated 29th September, 2018. It is against these orders, the

petitioner has instituted the present Petition.

6. In support of this Petition, Mr. Pagare strenuously contended that the Authorities below have committed several errors of law apparent on the face of the record. He submitted that the Authorities below erroneously proceeded on the premise that the petitioner has daughter by name Apeksha. He submitted that the documents produced by respondents No.2 and 3 are not authentic. The Authorities below, however, accepted the case of respondents No.2 and 3 and held that the petitioner has three daughters namely;

[1] Renuka Baliram Wagh born on 20th March, 2014;

[2] Apeksha Baliram Wagh born on 18th April, 2016 and

[3] Soni Baliram Wagh born on 13th February, 2018.

As the material on record does not substantiate that the petitioner has given birth to daughter Apeksha, the Authorities below ought to have dismissed the dispute. He reiterated that the petitioner has only two daughters namely Renuka born on 20th March, 2014 and Soni born on 13th February, 2018.

7. Mr. Pagare submitted that respondents No.2 and 3 have produced documents to contend that the petitioner gave birth to one daughter on 19th April, 2013 and unfortunately she died at the time of birth itself. Apart from that, the petitioner gave birth to Renuka on 20th March, 2014, Apeksha on 18th April, 2016 and Soni on 13th February, 2018. Respondents No.2 and 3, therefore, contended that the petitioner gave birth to 4 daughters after the cut off date. It was, therefore, contended that the petitioner has rendered himself disqualified for continuing as member of the Gram Panchayat. Even if, first daughter expired on 19th April, 2013, still the case is covered under section 14(1) (j-1) of the Act. Mr. Pagare submitted that as the first daughter died on the same date i.e on 19th April, 2013 as on the date of filing nomination paper, birth of the said daughter cannot be taken into consideration. In other words,

on the date of filing of nomination paper, the petitioner had only one daughter. Soni was born on 13th February, 2018 i.e subsequent to filing of nomination paper.

8. In support of this submission, he relied on the following decisions;

- [1] Jitendrakumar Jagdish Indise Vs. Sambhaji Dhondiram Pandit and others, Writ Petition No.7307 of 2012 decided on 14th September, 2012 by this Court (Coram: S.C. Dharmadhikari, J.).
- [2] Jitendrakumar Jagdish Indise Vs. Sambhaji Dhondiram Pandit and others, Letters Patent Appeal No.18 of 2014 decided on 23rd December, 2016 by this Court (Coram: A.S. Oka & Anuja Prabhudesai, JJ.)

He submitted that as on the date of filing of the nomination papers, the petitioner had only one living daughter i.e Renuka born on 20th March, 2014, the Authorities below committed serious error in allowing the dispute. This Court held that if the child is lost after the birth, it has to be held that on the date on which nomination paper is filed, the child has to be excluded while considering the aspect of disqualification.

9. Mr. Pagare also relied on the judgment of this Court in **Gangadhar s/o Gondum Tadme Vs. Trimbak s/o Govindrao Akingire and others, 2005 (1) Mh. L. J 94** to contend that respondents No.2 and 3 have not produced authentic documents which have presumptive value under section 114 of Indian Evidence Act, 1972. He also relied on the decision in **Meerabai w/o Suresh Bhill Vs. State of Maharashtra and others, 2013 (4) Mh. L.J, 446** to contend that respondents No.2 and 3 have not produced any material either of Gram Panchayat or Panchayat Samiti so as to corroborate the

documents produced by them.

10. On the other hand, Mr. Dighe supported the impugned orders. He has invited my attention to;

- [1] extract of delivery register maintained by Medical Officer, Primary Health Center, Dhamangaon for the month of January, 2018. Entry at Sr. No.5 records that Laxmi Baliram Wagh (wife of the petitioner) was admitted for third delivery. She has two living daughters. The last child was born one and half years back.
- [2] Family history of Balu Hari Wagh, father of the petitioner maintained by Anganwadi, Shenit, Taluka Igatpuri, District Nashik. This extract gives information about family members of Balu Hari Wagh and records that he has three grand daughters by name Renuka, Apeksha and Soni at Sr. No.8, 9 and 10 respectively.
- [3] Entries of pregnancy and delivery period maintained by Anganwadi, Shenit. Entry against family No.134 records that Lakshmi Baliram Wagh (petitioner's wife) delivered on second occasion and gave birth to a daughter on 18th April, 2016. Again, entry against Family No.134 records that Lakshmibai delivered on third occasion and gave birth to a daughter on 13th February, 2018 at Dhamangaon Health Centre.
- [4] Details of the girls between 0 to 5 years co-relating weight with age of the daughters and in particular entry No.14 records name of Renuka Baliram Wagh born on 20th March, 2014, entry No.34 records birth of Apeksha Baliram Wagh on

18th April, 2016 and entry No.48 records birth of Soni Baliram Wagh on 13th February, 2018.

- [5] Extract of vaccination register where entry No.25, Family No.134 records name of Renuka Baliram Wagh and birth date 20th March, 2014. Entry No.63 records birth of Apeksha Baliram Wagh on 18th April, 2016.
- [6] Extract of birth register from 2013 onwards maintained by Health Sub Center, Shenit, Tal. Igatpuri, Dist. Nashik. At Sr. No.4, it is recorded that Lakshmibai, wife of the petitioner delivered on 4th occasion giving birth to a daughter on 13th February, 2018 at Dhamangaon Primary Health Centre.
- [7] Entry at Sr. No.8 recorded that petitioner's wife Lakshmibai delivered on third occasion and gave birth to a daughter on 18th April, 2016. Entry at Sr. No.9 recorded that Lakshmibai delivered on second occasion on 20th March, 2014. Entry at Sr. No.1 records that petitioner's wife Lakshmibai delivered at home on the first occasion on 19th April, 2013 and the child died on the same day.
- [8] Extract of compensation deposited in the account of the petitioner's wife Lakshmibai in Dena Bank after her each delivery.

He submitted that record shows that petitioner's wife delivered on 4th occasion. He further submitted that section 8 of Registration of Birth and Deaths Act, 1969 casts duty upon persons to give either oral or written information in respect of births and deaths in the house whether residential or non residential. In the present case, the petitioner's wife delivered on second occasion on 18th April, 2016 and this information was not furnished in terms of section 8 of that Act as at that time, the petitioner had filed nomination paper for election of Gram Panchayat. Mr. Pagare submitted that the petitioner or

his wife are nowhere concerned with that entry as place of delivery is Shindegaon. They are not concerned with this place at all.

11. Mr. Pagare invited my attention to the report dated 18th May, 2018 submitted by Gramsevak to the Collector recording therein that after perusing the register of birth of the year 2013 onwards, no entry regarding birth of child in the family of the petitioner is noted. As against this, Mr. Kankal and Mr. Dighe invited by attention to the original birth certificate dated 19th May, 2018 of Renuka issued by Gramsevak of the Panchayat which records that Renuka was born on 20th March, 2014. Therefore, the report dated 18th May, 2018 submitted by Gram Sevak is factually incorrect and contrary to the record.

12. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Entire controversy centers around section 14 (1) (j-1) of the Act which reads thus;

**“14.Disqualifications._[1]No person shall be a member of a
panchayat continue as such, who_**

(a) to (j)...

(j-1) has more than two children:

Provided that, a person having more than two children on the date of commencement of the Bombay Village *Panchayats* and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1995 (hereinafter in this clause referred to as “the date of such commencement”), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase:

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause; or]

In the present case, it has come on record that the petitioner gave birth to a daughter on 19th April, 2013. Delivery was performed at home and unfortunately the daughter died on the same day.

13. Mr. Pagare relied on the decision of the learned Single Judge in **Jitendrakumar Jagdish Indise, Writ Petition No.7307 of 2012** (supra). In paragraph 3 of that decision, it was noted that after the birth of a third child on 26th August, 2003, unfortunately for respondent No.1, he lost his daughter Akansha, who was born on 28th July, 1999. She expired on 21st November, 2004. In paragraph 4, it was observed that the first respondent, therefore, did not have more than two living children on the date on which he filed his nomination form. In such circumstances, to hold that he was disqualified because he had three children prior to the Amendment Act coming into force and the cut off date prescribed therein would mean that the number of children have to be taken into account mechanically and whether they survive, or not. This is not intended because what the legislature provides is disqualification for having more than two children. The disqualification is for being elected and for being the Councilor/Corporator. In the instant case, we are, however, concerned with a disqualification “for being elected”. The words “for being elected” have some definite significance and that means, the time when the elections have been declared and the relevant stages are notified. If on the date of filing of the nomination, there are not more than two living children, which is the fact in this case, then, the disqualification is not incurred. The requirement is not having more than two living children.

14. The same order was carried in Letters Patent Appeal before Division Bench of this Court. After extracting clause (i) of Sub-section (1) of Section 10 of the Maharashtra Municipal Corporations Act, 1949 (for short 'M.M.C Act'), the Division Bench observed in paragraph 4 that the

disqualification arises when a nomination form for contesting the election is filed. In paragraph 5, it was noted that in the present case, admittedly, when the nomination form was filed, the first respondent had only two living children. Therefore, on that date, the disqualification under Clause (i) of Sub-section 10 of the M.M.C Act was not attracted. The Division Bench concurred with the decision of the learned Single Judge.

15. In the case of **Minasingh Majhi Vs. The Collector, Naupada & Anr., etc in Civil Appeal No. (S) 6525 of 2010** decided on 24th October, 2018, the Apex Court considered identical provision under Orissa Grampanchayat Acts, 1965 (for short 'Orissa Act'). In paragraph 3, the provisions contained in section 25 (1) (v) and sub-section (2) were set out. Section 25 (1) (v) reads thus;

“Disqualification for membership of Grama Panchayat. _
 (1)A person shall be disqualified for being elected or nominated as, a Sarpanch or any other member of the Grama Panchayat constituted under this Act, if he-
 (a) to (u) xxx xxx xxx
 (v) has more than two children”.

Comparison of section 14(1) (j-1) and section 25 (1) (v) of the Orissa Gram Panchayat Act clearly shows that the provisions are identically worded. In this context, the Apex Court observed in paragraph 6 thus;

“Reading the provisions of Section 25 (1) (v) and (2) of the Orissa Act, we are left with no doubt that the legislative intent is to restrict the number of children that a prospective elected member of the Gram Panchayat should have. The legislative emphasis is on the number of children that a prospective elected member has given birth to.”

16. A perusal of the above extracted paragraph clearly shows that the Legislature's emphasis is on the number of children that prospective elected

member has given birth to. In the present case, it is not in dispute that first daughter of the petitioner unfortunately died on the same day i.e on 19th April, 2013. Thus, the petitioner had given birth to the first daughter after the cut off date and the same cannot be excluded on the ground that on the date of filing nomination form, she was not alive. In view of the categorical finding of the Apex Court in paragraph 6 extracted hereinabove, it is not possible to follow decision rendered by the learned Single Judge of this Court in the case of **Jitendrakumar Jagdish Indise, Writ Petition No.7307 of 2012** (supra) which was upheld by the Division Bench. Thus, the petitioner gave birth to;

- [1] first daughter on 19th April, 2013 but unfortunately died on the same date.
- [2] Renuka born on 20th March, 2014.
- [3] Apeksha born on 18th April, 2016
- [4] Soni born on 13th February, 2018.

17. Mr. Pagare submitted that the documents produced by respondents No.2 and 3 are not authentic to establish that the petitioner has daughter by name Apeksha. It is not possible to accept this submission. I have already dealt with the material produced by respondents No.2 and 3 in the earlier part of the order. It is a material to note that family history was recorded after carrying out first survey in April, 2017 followed by second survey on 15th February, 2018. This survey clearly recorded that Balu Hari Wagh, father of the petitioner has three grand daughters namely;

- [1] Renuka Baliram Wagh
- [2] Apeksha Baliram Wagh
- [3] Soni Baliram Wagh

Against their names, in column No.9, mother's name is recorded as Lakshmi. In the extract of delivery register maintained by Medical Officer, Primary Health Center, Dhamangaon for the month of January, 2018, Entry at Sr. No.5 records

that Laxmi Baliram Wagh (wife of the petitioner) was admitted for third delivery. She has two living daughters. The last child was born one and half years back. Entries in the register of pregnancy and delivery period maintained by Anganwadi, Shenit, entry against family No.134 records that Lakshmi Baliram Wagh (petitioner's wife) delivered on second occasion and gave birth to a daughter on 18th April, 2016. Again, entry against Family No.134 records that Lakshmibai delivered on third occasion and gave birth to a daughter on 13th February, 2018 at Dhamangaon Health Centre. Details of the girls between 0 to 5 years co-relating weight with age of the daughters and in particular entry No.14 records name of Renuka Baliram Wagh born on 20th March, 2014, entry No.34 records birth of Apeksha Baliram Wagh on 18th April, 2016 and entry No.48 records birth of Soni Baliram Wagh on 13th February, 2018. Extract of vaccination register where entry No.25, Family No.134 records name of Renuka Baliram Wagh and birth date 20th March, 2014. Entry No.63 records birth of Apeksha Baliram Wagh on 18th April, 2016.

18. In the extract of birth register from 2013 onwards maintained by Health Sub Center, Shenit, Tal. Igatpuri, Dist. Nashik, at Sr. No.4, it is recorded that Lakshmibai, wife of the petitioner delivered on 4th occasion giving birth to a daughter on 13th February, 2018 at Dhamangaon Primary Health Centre. Entry at Sr. No.8 recorded that petitioner's wife Lakshmibai delivered on third occasion and gave birth to a daughter on 18th April, 2016. Entry at Sr. No.9 recorded that Lakshmibai delivered on second occasion on 20th March, 2014. Entry at Sr. No.1 records that petitioner's wife Lakshmibai delivered at home on the first occasion on 19th April, 2013 and the child died on the same day. As per the order dated 7th December, 2018, Mr. Kankal made available original record. With the assistance of the learned Counsel appearing for the parties, I have also perused the original record. After perusing the material on record, I am more than satisfied that the petitioner had given birth to 4 daughters;

- [1] the first daughter on 19th April, 2013, unfortunately, said daughter died on the same day.
- [2] Renuka born on 20th March, 2014
- [3] Apeksha born on 18th April, 2016 and
- [4] Soni on 13th February, 2018.

19. Even if, I exclude from consideration of birth of the first child on account of her death immediately on the same day as per the contention of Mr. Pagare, record clearly indicates that the petitioner has given birth to three daughters after the cut off date. The Authorities below after appreciating the material on record, have concurrently recorded a finding of fact to that effect. After perusing the material on record, I do not find that the Authorities below have committed any error. The Authorities below held that the petitioner has incurred disqualification under section 14 (1) (j-1) of the Act.

20. For the reasons indicated hereinabove, I do not find that any case is made out for invoking powers under Article 227 of the Constitution of India. The petitioner is not in a position to demonstrate that the findings recorded by the Authorities below are perverse being based on no evidence or that on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Authorities below. The petitioner is not in a position to show that the findings are contrary to the evidence on record. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising powers under Article 227 of the Constitution of India. No case is made out for interfering with the impugned orders. Hence, Petition fails and the same is dismissed.

21. While deferring hearing of the matter on 7th December, 2018, assertions made by the petitioner in paragraph 3 were recorded which are to the following effect;

“Apeksha is not a daughter of the petitioner and the petitioner is having only two daughters namely, Renuka and Soni”.

It was made clear that if the Court finds that the statement made in paragraph 3 of the Petition, extracted hereinabove, is false, apart from dismissing the Petition, the Court will take serious view of the matter and consider initiating proceedings under the Contempt of Courts Act, 1971 for making false statements on oath. The petitioner was also directed to remain present on that date. Accordingly the petitioner was present on 12th December, 2018. Once again, the petitioner was confronted with the statement whether he still maintains that he does not have a daughter by name Apeksha and he is having only two daughters namely Renuka and Soni. He maintained that he has only two daughters by name Renuka and Soni and Apeksha is not his daughter.

22. As the petitioner is still maintaining his statement that he is having only two daughters by name Renuka and Soni and that Apeksha is not his daughter, issue notice to the petitioner as to why proceedings under Contempt of Courts Act, 1971 be not initiated against him. **The notice is made returnable on 18th January, 2019.**

23. At this stage, Mr. Pagare orally applies for continuation of ad-interim order for a period of 4 weeks from today. Having regard to the conduct of the petitioner, I do not find that request made by Mr. Pagare is reasonable. Hence, oral application is rejected.

[R.G. KETKAR, J.]